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ABSTRACT

This paper proposes an analytical perspective that illuminates the major variables in the establishment of labor relations policy in education. It describes the relationships that exist between collective bargaining, the pursuit of the public interest, and the protection of client interests in the processes of schooling. The analysis is based on field data from two sources: transcripts taken from public hearings held by the National Committee for Citizens in Education and transcripts from 22 videotaped interviews generated under the sponsorship of the Associates Program of the Institute for Educational Leadership. Three levels in the analysis of labor relations policy for schools are considered. First, the social policy level in which it is necessary to determine what is meant by a "legitimate" interest (whose interests are legitimate with regard to what aspects of the collective bargaining processes or outcomes). Second, the power resource level at which it is necessary to determine what power resources are available to each party with a legitimate interest and how potent these power resources are for affecting the collective bargaining results. Third, the statute language level at which it is necessary to determine what impact various statute provisions will have on altering the power resources of the various interested parties. (Author/IRT)

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THE IMPACT OF COLLECTIVE BARGAINING ON PUBLIC AND
CLIENT INTERESTS IN EDUCATION

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I.

As public school changes go, the introduction of collective bargaining into school organizations has been quite rapid. Since the first enabling legislation was passed by Wisconsin in 1959, at least 32 states have provided some form of legislative basis for teachers to organize and seek collective consideration of their contracts with school boards.¹ In some other states, such as Illinois, collective bargaining has become a de facto reality, even though no specific legislation has supported its development.

Despite more than fifteen years of experience with a wide variety of specific arrangements for collective bargaining, there is little known about the impact of collective negotiations on the schools, either in regard to the distribution of budget dollars or, more importantly, in regard to the formation of educational policy. Indeed, there is still little agreement about what concepts are important for the analysis of this impact in order to develop a coherent picture of the results of collective bargaining legislation and practice. For the most part, analysis of collective bargaining in the schools has remained a partisan matter in which the objective has most often been to affect the political actions required to strengthen or weaken the emergent militancy of teacher organizations.

This paper proposes an analytical perspective which hopefully illuminates the major variables in the establishment of labor relations policy in education. Specifically the intent is to describe the relationships which exist between collective negotiations, the pursuit of the public

interest, and the protection of client interests in the processes of schooling.

Two sources of field data form the basis for the analysis to be presented here. The first consists of the transcripts taken from public hearings held by the National Committee for Citizens in Education in five major metropolitan centers during 1974. The witnesses at these hearings are described in detail in the NCCE report Public Testimony on Public Schools.² The second data set consists of transcripts from 22 videotaped interviews generated under the sponsorship of The Associates Program of the Institute for Educational Leadership.³ These interviewees included 9 nationally prominent legislators from eight different states; a state deputy commissioner of education dealing with collective bargaining; national executives from the American Association of School Administrators, National Association of School Boards, National Association of State Boards of Education and the National Conference of State Legislators, along with two union organizers; a professional arbitrator; four professional staff people working for a school board, a state senate education committee, a governor's educational governance commission, and a National Citizen's interest group; and a university scholar with labor experience.

In the NCCE hearing transcripts, collective bargaining is only one of the five major themes which concerned witnesses who were invited to discuss all of the major issues which they felt are confronting school governance. The TAP interviews focus entirely on collective bargaining for public education and provide a more detailed treatment of its elements and problems.

II.

The first impression one gets by reading through these transcripts is one of mind boggling diversity and contradiction. The speakers have different interests, different views and often use the same words with different meanings. In order to grasp the significance of the data, we must begin by identifying some integrative themes which relate the divergent views to one another. Rep. Al Burstein of New Jersey articulated the most useful overall perspective on collective bargaining policy when he said,

"Well, the items I think are basic, of course, to start off with, are the grant of powers to public employees and teachers specifically, to bargain collectively, to organize. That's a fundamental right, as I view it. The second thing is that in order to stimulate solutions to bargaining problems ah, there has to be some type of balance created between the power of the contending interests and in order to do that there has to be some provision that would enable some tribunal to make a finding of unfair labor practices in the event of an unjust or obstinate refusal to bargain in good faith."

⁴
(TAP, Burstein, p. 8, emphasis added)

Arbitrator Arnold Zack put the same point more bluntly when he said,

"...you're now in a power broker's game and it's a question of negotiating the best deal you can get; with rules...what we need is an arena, and what we need is a referee, and what we need are rules for this combat."

(TAP, Zack, p. 7)

These two men recognize explicitly what is assumed in all of the data: conflict among legitimate interests is endemic to labor relations in schools,⁵ and the role of government in this area is one of conflict management through the establishment of an equitable balance of power among these legitimate interests.⁶ Furthermore, this balance of power is created by governmental action through 1) establishing rules governing

the behavior of the contending parties in their relationships with each other, and 2) providing an effective tribunal with the authority to decide whether the parties are violating the rules, and the power to restrain an offending party.

California legislative consultant, John Bukey, describes how this governmental role becomes effective through the development of legislation when he points out that,

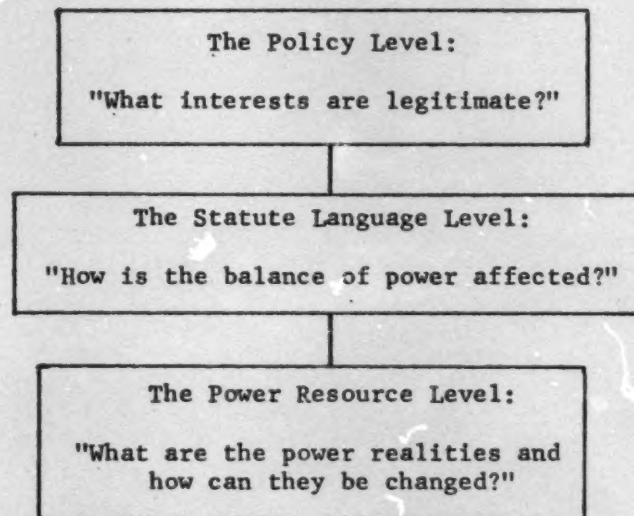
"Language is all-important. When you're talking about a bill that is restricting, or perhaps structuring, a power relationship, just how you state something and how you give the power is enormously important."

(TAP, Bukey, p. 4)

In other words, the process of statute construction is the technology of power balancing. By the use of statute language, governmental action connects the realities of power with the social policy goal of an equitable balance among legitimate interests. This means that, as indicated in Figure A, there are three levels in the analysis of labor relations policy for schools:⁷ 1) the social policy level in which it is necessary to determine what is meant by a "legitimate" interest (i.e., whose interests are legitimate with regard to what aspects of the collective bargaining processes or outcomes); 2) the power resource level at which it is necessary to determine what power resources are available to each party with a legitimate interest, and how potent these power resources are for affecting the collective bargaining results; and between these two is 3) the statute language level at which it is necessary to determine what impact various statute provisions will have on altering the power resources of the various interested parties.

FIGURE A.

Levels of Collective Bargaining Analysis



The relationships among these three analytic levels is complicated in three important ways. First, labor policy and statute construction involve many different variables, and it is the orchestrated impact of all of the policy elements not just the effects of each separate element that must be analyzed before a valid picture of the balance of power can be developed. American Association of School Administrators executive director, Paul Salmon illustrates this complexity when he argues that collective bargaining on a "narrow scope of issues is quite appropriate", but if the scope of bargaining is broadened to include matters of "educational policy", then "parents ought to be able to sit at the table, because otherwise...we're really abrogating their rights." (TAP, Salmon, p. 2-4). In these remarks, Salmon relates the policy level question of parent's legitimate interests to the statute level question of the scope

of bargaining, and implicitly identifies "sitting at the table" as the power resource to be balanced against teacher interests in bargaining over a broad scope of educational policy questions. A second source of complexity across the analytic levels lies in the fact that, as New Jersey's Burstein reminds us, "we are essentially in an experimental field. We are still groping for final answers." (TAP, Burstein, p. 14). Since, in education, we are dealing with public sector bargaining in a recently organized industry we are in an area which has not been well studied. Therefore, we do not know with any certainty what the long term consequences of some statute provisions might be (even though some of them may have worked well in private sector bargaining or with non-professional employees).

The third source of complexity lies in the fact that political reality is largely symbolic reality.⁸ The symbolic significance of some policy options is so overwhelming that their technical importance cannot be easily examined. An example of this reaction to symbolic issues is provided by Colorado Senator Hugh Fowler who says,

"I am opposed to collective bargaining because collective bargaining in the public sector changes our form of government...it is simply a violence done to a republican form of government...I say that the reality is that collective bargaining is destroying our country today and it's gotta be stopped and I hope that we'll stop it in Colorado..."

(TAP, Fowler, p. 16, 18)

In every effort to manage conflicts through governmental action there will be some who find the solution more loathsome than the problem. And when those who object to particular mechanisms of conflict management (whether the objection is to arbitration, strikes, or to the whole idea of collective bargaining) have positions of political power and authority

they will force any power balancing process away from the objectionable policies, regardless of the actual outcomes of such policies. Since everyone who is trying to shape labor policy for education must accommodate their desired goals to these symbolic "political realities," we find statements like the following being made by political leaders:

"I would not be adverse to having a student representative or parent representative at collective bargaining. After all, taxpayers are totally involved in the end results of collective bargaining, so, in effect, they're a part anyway. I think, however, that in Connecticut the opposition would be so strong from local boards and teacher groups to extending the bargaining process to parents or students that it would not stand a chance."

(TAP, Klebanoff, p. 3)

This remark by representative Klebanoff reveals another important point about the formulation of public policy in this area. The overriding political action norm among the legislators who contributed to the data is that collective bargaining statutes are, and must be, based upon a consensus of views among the major interest groups. California's John Bukey puts it clearly:

"I think that the approach that we took, at least for California, was a proper approach...Senator Rhodda who is the author of this legislation asked me...to attempt to achieve consensus. By that he meant: ascertain what the views of the people are before you actually put a piece of legislation in cement...get input from a wide variety of groups and then put a rough draft of the bill together and send it out again to these groups prior to the time it was introduced as legislation...You cannot set as your goal that you're going to satisfy everybody--as a matter of fact, you're almost setting as your goal that you aren't going to satisfy anybody fully."

(TAP, Bukey, p. 6)

New Jersey's Deputy Commissioner of Education is critical of the consensus process however and claims that:

"Most of the bills that have been passed are so full of compromise that just reading them you can see the kind of exchanges that took place between the different pressure groups during the process of passing a particular act. Most of them are very poor."

(TAP, Lataille, p. 4)

Nevertheless, political leaders interested in educational labor policy generally embrace this consensus approach to legislative decision-making. Theodore Lowi⁹ has argued persuasively that this consensus approach among pluralistic interests prevents government policy from responding to the public interest, and makes planning difficult or impossible. The political leaders contributing to our data are, however, not very sensitive to Lowi's criticism.

III.

What are the legitimate interests which need to be accommodated in education labor policy? On the surface, this question seems fairly simple and usually evokes a list of interest groups which are described as having legitimate interests affected by collective bargaining processes or outcomes. Four groups are consistently mentioned, although they tend to overlap and lose clarity of definition as discussion of their actual interests progresses. The first group mentioned, of course, is the teachers whose incomes and working conditions are being settled. The second group to be mentioned is the management group. It is always thought to include both the school board members and the school's chief administrators. In discussions of collective bargaining it is quite rare to find a clear delineation of the difference between school board interests and administrative interests. Administrators tend to see themselves as merely representing school board interests, while teacher organizers see the school boards as

largely under the control of administration interests. The third group whose interests seem to be legitimately involved are the school clients. Students and parents generally are seen as both belonging to the client interest group. Some observers think of the students as more important while others emphasize the parents as the true clients. If students have a legitimate interest, the comment of a Washington State Department of Education executive summarizes their impact on the outcomes of collective bargaining. He told the NCCE panel,

"I've sat in on a great many negotiation sessions all over the country and it's amazing how many times you never hear a student mentioned in the process."

(NCCE, Portland, p. 10)

And a Portland teacher organizer complains why this is so:

"...we have been so busy trying to get ourselves as teachers into the decision-making role that we really haven't thought a lot about how to get the students and parents into it. We're fighting tooth and nail to get into it ourselves."

(NCCE, Portland, p. 32)

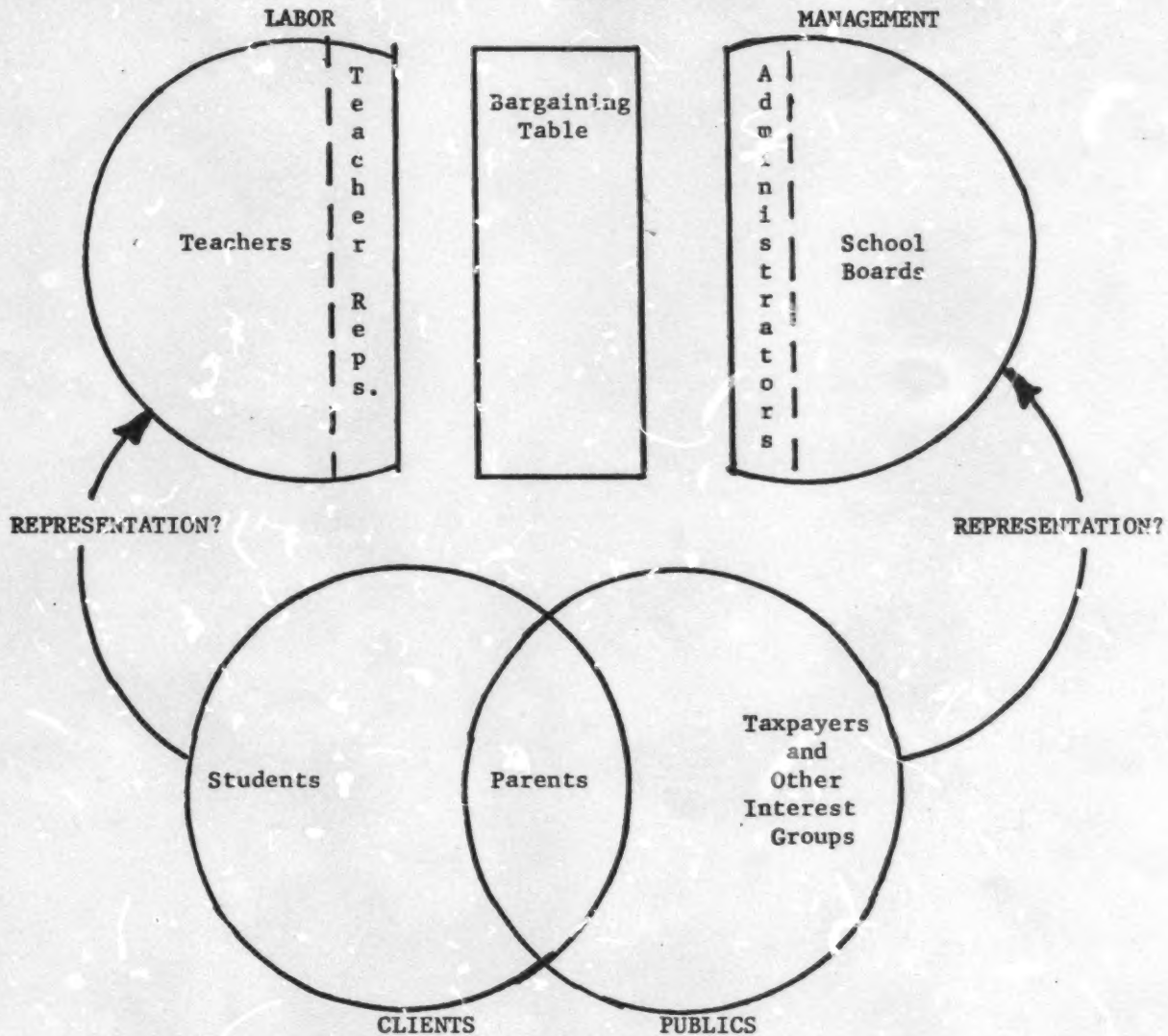
The fourth interest in the collective bargaining for public schools is the public which elects the school boards who bargain and the state legislators who write collective bargaining legislation, as well as pay the taxes which support the schools and evaluate the results. For many observers, the public interest is identified with the parent's interest, for others, like Portland School Board member Robert Ridgley, public interest is equated with the school board interest.¹⁰ Ridgley remarked to the NCCE panel that,

"You are talking about citizen involvement, but the great experiment in American education was to get citizen involvement. You know what that was called? The school board. And we seem to forget that in all of these studies."

(NCCE, Portland, p. 77)

Figure 3 displays the four frequently mentioned groups graphically and enables us to see where some of the confusion of legitimate interests lies.

FIGURE B.



As the figure shows, we typically find only the teacher organization representatives and the administrative representatives at the bargaining table. At the present moment, the dominant view is that these two parties will represent all of the legitimate interests. Teacher organizers argue

that they are strongly motivated by client interests and that, as one union organizer puts it:

"...as to who represents the children, I feel that teachers represent the children and I feel that the school boards represent the children--I think that when you begin the process, both sides want to do something that's going to be meaningful for them."

(TAP, Singleton, p. 10)

Mr. Singleton perceptively continues, however,

"Now they may get lost in the budget shuffle...and that's unfortunate, but then they always did. Things are better today for children than they were when bargaining started. Better than when I started teaching."

(TAP, Singleton, p. 10)

When questioned about representation of parental and public interests, (parents being seen now as part of the public) Mr. Singleton offers the typical response of those who are involved in either labor or management groups when he says,

"I've talked to this question for long periods of time, and I can honestly conclude that I do not understand the question. I mean, who represents them? The people that they elected, the school boards. I'm just not clear on why they feel they haven't been represented...maybe the school board doesn't always reflect the community, but they're elected and they serve a two year term (in Rhode Island) and if you don't like what they're doing, then you unelect them."

(TAP, Singleton, p. 9)

Clarification of the problem of legitimate interests can only be achieved by getting beyond simply listing the groups whose interests are affected. The actual interests themselves must be explored and their structure analyzed. Several important efforts in this direction have begun appearing in the research literature on public sector bargaining over the past few years. These efforts have, however, been largely based on theoretical descriptions of interests, rather than reports or

claims of interest drawn from interest group spokesmen directly. The data on which this report is based contribute significant new evidence in this area.

Two special circumstances in public education go far in accounting for the special nature of the legitimate interests in school labor policy. The first circumstance springs from the nature of education as a public good. The second arises from the qualities of the work done by teachers.

Not only is education a public good, it is also produced by public employees under conditions of compulsory acceptance by the clients, and compulsory support by the taxpayers. These factors alter quite fundamentally the relationship between taxpayer and client interests in educational collective bargaining and the interests of consumers who can utilize market-place choices to decide whether a contract settlement is compatible with their interests or not.

Wes Apker of the National Association of State School Boards introduces these ideas when he says,

"I think there are substantive differences between the private sector and the public sector. I don't want to go into a long esoteric discussion about how the market, how the consumer is purchasing goods in the private market controls pretty much--puts some constraints on--what management and employees can bargain and how far they can go. But if we use that analogy and apply it to the public sector, the public, the consumer in the public sector has no choice. If the police go on strike that consumer can't go anyplace else to get police protection. Similarly, parents and children have no choice as to where their children go to school if they are living in a particular school district unless they can afford a private school. And if the teachers go on strike they have no other option. Okay, given that, the constraints imposed by consumer purchases in the private sector no longer apply to the public sector."

(TAP, Apker, p. 1,2)

Recent literature on this subject now recognizes there is no market competition in the area of educational services.¹² Not often recognized, however, is that the loss of the market control in education is not related to alternative choices at all. Rather it is related to the fact that clients are compelled by the police power of the state to utilize educational services whether they value or desire them or not. And taxpayers are compelled by that same power to pay for the costs of education whether or not they feel that they benefit in any way from the services. Hence it is not the lack of competitive offerings (which actually do exist to some extent) but the total lack of choice regarding the value of education by an individual which means that market controls can not be expected to be effective.

The fact that compulsory attendance and taxation to support the schools completely destroys the market mechanism is not widely appreciated among even very knowledgeable observers. The failure to grasp the importance of this fact to clients and taxpayers leads to such remarks as,

"...they [public representatives] can move into the bargaining session, make all kinds of statements and yet they don't have to live with that contract which is finally developed. And that is the major problem--they can walk away from that contract the day that this contract is signed, yet those two parties, who are signatures, are going to have to live with that from one to three years. Now I cannot support a third party at the bargaining table."

(TAP, Steinhilber, p. 11)

Because of the absence of market choice mechanisms, the taxpayer and the client see collective bargaining as a change in school governance far more than a change in school labor-management relations. For the public and the clients, labor relations laws for the schools are but one part of the process and the problem of controlling educational services. The

California League of Women Voters lobbied strenuously for a bill which forces disclosure of contract proposals prior to their consideration in bargaining sessions because, in the words of League executive, Jackie Berman,

"League members believe that the policy agreements which resulted from...non-public sessions were a direct threat to our position requiring 'involvement of the community'..."

(NCCE, Los Angeles, Thurs, p. 139)

There are two possible ways to protect the client and public interests in educational governance as they are affected by collective bargaining law. The first is through adequate representation at the points of decision-making, the second is through direct participation. Representation is widely discussed in our data, especially the adequacy of school boards to represent public and client interests. One view is that the boards are and legally must be the public representative. The other view, expressed best by NCCE spokesman Douglas Mitchell is that,

"The thing we have to first understand is that there's a difference between representing the public and managing the schools. I don't think that the school boards intend themselves to represent public interest...they think of themselves as trustees of a corporation rather than as members of a delegate representative assembly...they understand management's problems, they work very closely with the school superintendent...that's reasonable, that's appropriate, that's the way the system has to work--the public, when they are electing school board members, however, are not electing a delegate representative assembly, they are electing a board of trustees to assist in the oversight of the management side of the schools...what we do not have at the local school level is an elected body that serves the function of a representative body..."

(TAP, Mitchell, p. 1, 2, 7)

If the school boards do not adequately represent the public interest, how can it be given expression? Some observers call for the creation of new representation mechanisms (such as NCCE's proposal for school councils

at each local school; aggregated to form larger representative bodies).¹³ Others suggest one or more of a wide range of direct participation mechanisms ranging from public disclosure of proposals, to "fishbowl" bargaining, to public access to the bargaining table itself. Portland board member Robert Ridgely presses the urgency of public access for practical as well as political reasons when he says,

"What this country really needs is a third force in education. A third force because we are getting bifurcated and polarized into a collective bargaining stance which...puts school board members and administrators on one side and teachers organizations on the other...there is more of a barrier to...change than perhaps any of us realize and that barrier...is the direction that we are headed in collective negotiations..."

(NCCE, Portland, p. 67, 69)

V.

If the compulsory and public good character of education turns collective bargaining into a governance issue for public and client groups, the specialized character of teacher's work gives rise to legitimate public and client interests in teacher productivity. Public school teachers are professional (or at least quasi-professional) workers who are performing complex personal services in crowded classrooms. Their work is further complicated by the fact that learning requires motivation, and motivation of children who are compelled to be in school is not always easily accomplished. The net result of these factors is that it has been virtually impossible to discover even rudimentary production function variables for education. It is nearly impossible to predict how moderate changes in most of the manipulatable classroom variables, like curricula, training for teachers, numbers and types of students, etc., will affect

learning in any group of children. At the same time the results of schooling are seen by clients and publics to be highly important in affecting children's chances for success in adult life. These factors lead to an understandable tension between the teacher's interest in controlling the conditions of the work and the client and/or public interest in controlling the goals and results of the work.

An Oregon School Board Association executive asserted that,

"I think you see in education something different than in any other field...It's only in education that we see the employees organization really trying to get control or at least bilateral decision over the mission of the organization and the way in which that mission is going to be carried out."

(NCCE, Portland, p. 21)

This may seem like an overstatement, but a review of the claims made by teacher organizers about their purposes and goals suggests that it is not.

United Teachers of Los Angeles organizer Michael Fay is interested in seeing that the results of negotiations lead to more teacher control over their work. He says,

"...teachers do have to fight for resources. The school systems are political systems. They have a so-called pie that is divided up in the essence of a political process. The needs of teachers, which are closest to children, are often ignored because of other demands teachers do not always view as being important to the educational program and we need a way in which we can get adequate resources to the classroom program and not worry about where all the money is going in other areas that do not seem to us to be related to classroom instruction."

(TAP, Fay, p. 11, 12)

A Portland teacher organizer made the same point to the NCCE panel when he reported that,

"We look with disfavor on any narrow view of the role of teacher involvement in decision-making processes. The members of our association have increased their dues over 17% to enable us to provide staff and training for the participants of...educator council programs at the building level. If this program works as we hope it will, it will mean an end to control of the planning process by management of the district alone."

(NCCE, Portland, p. 28)

Teacher organizers repeatedly acknowledged that their interests go far beyond "bread and butter" matters and include the essential character of school program policy.

From the client and public perspectives, the problem of controlling the work performed in schools is partly a matter of matching the level of decision-making with the level of the problems which need decisions.

A school board member from a moderate sized school district said that,

"There are essentially two problems in the school system, one of these is the problem at the local building level in the classrooms, where the children and teacher come face to face and where education should be taking place. You have a separate and distinct problem at the district-wide level and that is where you have to try to find necessary resources, be they financial or human, to provide district guidelines and policies to see to it all children in the district have equal opportunity for education within that system."

(NCCE, Los Angeles, Thurs, p. 171-72)

And Portland's Robert Ridgely insisted that,

"I think your number one problem in terms of getting more involvement in the school is the simple fact that most citizens care about getting involved only when their interests are going to be pretty directly affected by the issues...generally people only care enough to get involved if it is either their local school or their child that is going to be affected."

(NCCE, Portland, p. 68, 69)

Generally speaking, school administrators and school board members and leaders have taken the position that they are protecting the client

and public interest in controlling productivity by insisting upon a very narrow scope of bargaining for the teacher contract while reserving most productivity questions to a matter of "management rights." National School Boards Association spokesman Gus Steinhilber puts the point clearly,

"Should curriculum development be part of terms and conditions of employment?--we think not, we think there's some residual management rights, if you will, that should remain with the board, because how else can parents be protected? How else can the students be protected?...I really fear that if it's all determined in a collective negotiated agreement, then how will you determine productivity? How will we increase productivity? I think you become stultified that way."
(TAP, Steinhilber, p. 8, 9)

Citizens and clients, however, are no more confident that school boards or administrators will see to it that they get the right type and quality of education than they are that teachers will readily serve their needs. Frequently, in fact, parents and citizens are supporting the teachers against the "downtown" administration and school boards. In the final analysis, protecting the legitimate client/public interests in productivity rests on whether or not contract clauses can contain the needed specification of teachers work performance so that clients will be well served by effective contract administration, or whether some other basis for resolving productivity conflicts must be found. If contracts can be written which cover the needed interests, then we are back to the question of governance and getting client/public interests to the bargaining table. If, as seems more likely, the lack of a known production function and the inability to specify what results will follow from any particular educational action means that teachers cannot contract to deliver their services in ways that take account of client/public interests,

then it is important to ask what powers can clients and the public have to engage in a continuous give and take dialogue with educators over the productivity of the schools.

VI.

If the object of labor laws is to establish a balance of power among the various legitimate interests--labor, management, client and public--what are the sources of the power which can be distributed or re-distributed to achieve that balance? Most observers do not confront this question directly. They tend, rather, to be concerned with power balancing issues taken more or less issue by issue. There are probably at least three reasons for this: first, power tends to be thought of as a "dirty word" by many people so they approach power relationships obliquely rather than directly. For example, Maryland representative Lucy Maurer says that she believes that collective bargaining,

"...gives teachers an opportunity as a group to have an equal opportunity in reaching decisions about wages and hours. I do think that collective bargaining, to work, has to have equality at the bargaining table. If either the board or the teachers are too strong, then you don't have good bargaining."

(TAP, Maurer, p. 1)

Representative Maurer is talking about a balance of power, but frames her views in terms of the more palatable symbol of "equal opportunity". The second reason that the descriptions of power are not as explicit as might be desired is that most people do not have a comprehensive view of power resources. Most observers tend to focus on one, or a few, types of power and to not consider other possibilities. For example, many citizens groups are very much aware of the formal power of school officials to

make budget or programmatic decisions but are far less aware of their own ability to bring informal political pressure to bear on the schoolmen to control their choices through threats of public exposure or the withdrawal of political support. The third and most important reason that our data does not present an orderly analysis of power resources is that many of the observers are unaware that labor relations policy is to be understood as primarily power-balancing among interests. Power-balancing is, after all, the analytic perspective taken by this paper--not necessarily the most important idea for those who contributed to our data.

A careful reading of our data uncovers eight different power resources which are or can be manipulated by means of changes in a collective bargaining statute. 1) The first, of course, is the legal power conferred upon the parties to a collective contract to seek recourse administratively or in the courts for the failure of the other party to act in good faith or to execute agreements which are reached. This power operates through rules which specify who must do what, and which outlaw some potential activities as unfair practices. But that is by no means the only power resource affected. 2) A second source of power touched by collective bargaining law is the power of organization. When groups are formed and they elect officers, hold meetings or otherwise strengthen their cohesiveness and their consensus on important issues they invariably exercise considerably more influence than individual members of the group did before organization. Recognizing the power of organization, labor leaders have sought the right to organize in many cases long before they have demanded collective bargaining. 3) The third power resource affected by labor law is the power

of money. Money for travel, for staff personnel, for office space, and to finance political lobbying efforts is generally made available to unions through dues which are made legal and easily collected through the statute. 4) A fourth power resource is information. Early in every effort to influence the course of policy in any complex organization, there arises a need for information. Citizens and teachers alike are deeply sensitive to the power of information control which rests in the hands of school administrators. A collective bargaining statute can determine who will have access to various sorts of school district information. 5) A fifth source of power which is affected by labor law is the power to bring economic or political sanctions to bear on those representing contending interests. Such sanctioning activities as boycotts, strikes, slowdowns, or public demonstrations and picketing, are manipulated by collective bargaining law so as to change the relative power of one group or another. 6) A sixth source of power is expertise. If the labor law permits labor, management, public or client interests to be represented by professional negotiators or other experts then those interests are more likely to be realized. Not only is expertise in negotiations an important source of power, but so also is expertise in such areas as budget development or analysis, or public relations. 7) A seventh source of power affected by most labor relations laws is that of personal charismatic or persuasive power in the creation of fact-finders, mediators and arbitrators who have the right and opportunity to try to facilitate settlements by persuading various interest groups to compromise their demands and accommodate other interests. 8) Also not to be overlooked is the important ideological or symbolic power of government to legitimate various interests by recognizing

their interests in public debate and statute provisions as well as to refuse to legitimate other interests.

Producing a balance of power among the legitimate interests does not, of course, mean giving identical powers to all interest groups. Rather each interest must be given those power resources which are appropriate to the nature and extent of their interests. Some resources are better suited to defending or protecting interests which might be trampled on, while others are more appropriate to the aggressive pursuit of interests. For instance, ideological or symbolic legitimacy does not help much to protect individuals against organizational or monied interests, but it provides assistance in helping one organization establish itself against another. The power of legal recourse in the courts, on the other hand, is ideally suited to the protection of individual rights and interests.

Changing the balance of power among interest groups is not an easy task for a legislature. Not only is sophisticated political judgment required in order to determine when a balance has been achieved, but the interest groups invariably see themselves as too weak and in need of more legislative support. Connecticut representative Klebanoff puts the legislator's dilemma succinctly when he says that,

"...too often we have, of course, the different groups coming in asking us to pass legislation which is really to give one side a club which they can use to have the upper hand. We in the legislature come from all walks of life and hopefully, however, we can disassociate ourselves from some of our backgrounds and look at the situation fairly--pass a law that is fair to both sides, that doesn't give one side an advantage over the other..."

(TAP, Klebanoff, p. 6)

And Illinois representative Hoffman points out one of the political difficulties within the legislative process of achieving an adequate consideration of public interests. He says that,

"The longer we wait to do something, the more difficult it is to strike a reasonable balance because in many ways in the General Assemblies the public isn't really very well represented. The people we come in contact with in legislative bodies are usually special interest groups, and if we are, in fact to be truly public servants, the quicker we get on with this type of thing the more likely their interest is to be taken into consideration."

(TAP, Hoffman, p. 11)

VII.

Statute construction issues arise from the interaction between the realities of power resources and the goal of giving each interest group sufficient power to protect and pursue its own interests while preserving the rights and interests of others. At least five major statute issues important to public and client interests are receiving repeated attention in the continuing development of collective bargaining for the public schools.

1. The scope of bargaining.

New Jersey representative Burstein reports that,

"I am of the opinion that the scope of bargaining which is probably the stickiest part of this whole subject that we're discussing, has to be carefully viewed so as to not infringe upon what are so-called management rights of boards of education to establish curriculum to, in effect, run the school system without the necessity of going back to the teachers in one case or another."

(TAP, Burstein, p. 3)

And a long-time consultant to the New York City school board, Ida Klaus, says,

"...there ought to be a determination of the scope of collective bargaining in the law. Now I've changed my position on that. I used to say the parties ought to work it out and can work it out. I think there've been a number of strikes, or too many strikes on the issue of what's negotiable and what's not. And I believe it's the better part of wisdom to include in such a law what the areas of collective bargaining are, more specifically than appears in most public employee laws...Subjects should be gone into."

(TAP, Klaus, p. 10)

Union organizer Bernie Singleton insists, however, that,

"...anything should be bargainable--I mean I'm always amused when I get into this area of legislating the scope of bargaining...I think any strong union can negotiate anything it wants to negotiate and I think any weak union couldn't negotiate things that it might have the legal ability to negotiate, but without the strength and without the membership behind a particular issue it's not going to be negotiated. I think you ought to be able to talk about anything."

(TAP, Singleton, p. 4)

New Jersey Deputy Commissioner of Education Laitelle reports that the scope of bargaining is one of the issues most frequently settled through the compromise/consensus building process which leads to the development of a statute. He says that,

"...the typical compromise that happens in the passage of a state act is that the union will come in fighting very hard for a very open act and management will come in looking for a management rights clause built into the act similar to what Hawaii has, and also looking for scope of bargaining--the compromise ends up being that they give up the scope of bargaining..."

(TAP, Laitelle, p. 8)

A moment's reflection on the remarks by these four observers make it painfully obvious that the question of the scope of bargaining is intimately bound up with a number of other issues such as management rights, strikes, and union strength. A statute will not only affect the scope of

bargaining, but it will balance the scope question against these other concerns. Portland school board member Robert Ridgely connects the question of bargaining scope directly to that of citizen interests when he says,

"...some people are proposing--instead of two chairs at the table, the way to solve this problem is to have three chairs and have the citizen representative, the teacher representative, and the school board representative...My point was that that is a secondary solution, once you've lost the first game of the double-header. The first game...is now being played ...[it is to] make a clear delineation of those issues that should be on the table at these secret meetings and those issues that should be kept off the table legally."

(NCCE, Portland, p. 75, 76)

Two points are absolutely clear in our data. First, even the most sophisticated observers disagree over how to settle the question of the scope of negotiable issues. Teachers are almost universally committed to a broad scope approach while management interests see the narrowing of scope as vital to the protection of their interests. A second, and more important point also emerges from the data, namely that there is significant disagreement over whether the scope of bargaining really can be effectively controlled by statute. There is some reason to believe that no effective containment of the scope of bargaining is possible due either to the logic of the legislative process or the logic of the negotiating process or both. This appears to be an important area for the educational research community to devote considerable attention in the immediate future. If, as labor leaders desire, and some observers believe will inevitably arise, negotiations will move to discussing "anything that is important to the performance of the work",

then the position of those leaders desiring a very narrow scope of bargaining is an unworkable and potentially dangerous approach to collective bargaining legislation.

2. Resolution of Impasses.

The second major issue in the development of a collective bargaining statute is how to resolve persistent disagreements between the parties when an impasse is reached. John Callahan of the Conference of State Legislatures puts the matter succinctly,

"I think more states are trying to build in two or three types of impasse procedures into their laws so that we follow a course where we start from mediation, for example, factfinding; going through these processes, then if we get to the position where those particular impasse procedures don't work, then obviously it's a choice between arbitration and allowing a strike to occur.

(TAP, Callahan, p. 9)

In education both strike and arbitration impasse resolution procedures take on new meanings. Arbitration is difficult for two reasons. First, many observers believe that an arbitrator in the public sector acquires governmental powers which he exercises without public electoral accountability. This perspective has great symbolic and ideological significance, and smacks of government without representation. In point of fact, the arbitrator would have no more discretionary power than is already vested in a fairly large number of appointed public officials, especially judges. But the ideological resistance to arbitration is nevertheless quite strong. A second, more substantive problem with arbitration lies in the base of financial support that sustains the public school system. Since financial support is derived from taxes and not connected to work efficiency on the part of teachers or other employees,

the arbitrator cannot use the economic health of the organization as a basis for decision. Instead, he is forced to rely on the "prevailing wage" or other comparative guideline for making economic decisions. If, as some have argued, there is already too little economic incentive for management resistance to union demands, the prevailing wage solution will only contribute to the general inability of schools to resist upward economic pressures.

If arbitration is not economically sound in schools, however, strikes are still less so. The strike, in private sector industries has very significant economic consequences to both labor and management. Revenues are reduced for both groups due to lost wages and lost productivity. In the schools, however, tax revenues continue to flow into management whether classes are being held or not (although in some states the state level revenues based on average daily attendance are affected). Furthermore, in most states the mandatory school year length insures teachers of full salary once a strike is settled.

Although as with arbitration, there are some who find strikes offensive for moral or ideological reasons, the big question surrounding strike policy concerns the special character of public sector economics and the fact that strikes have different consequences in tax supported enterprises. There are enough different tax structures among the 50 states that one fruitful line of research might well be to assess the relationship between tax structure and the willingness to use strikes for impasse resolution and the economic incentives created by strikes.

From the client and public perspectives, the consequences of strikes are felt immediately in the disruption of family routines and educational

progress. The impact of arbitration is less immediate, but to many observers more important in the long run. These observers feel that public access and participation in important qualitative decisions about school programs will be lost if arbitrators are empowered to consider only the interests of teachers and managers in reaching settlements.

3. How strong should union organizations become and who should belong to a bargaining unit?

These are a wide variety of statute provisions which can strengthen or weaken a union organization. Such matters as dues check off, support required to force an election, security of representation once elected, union or closed shop agreements, etc., all form the basis for union strength. The clients and the public in many school districts, especially large urban districts, are quite willing to see stronger teacher unions which have the power to offset administrative bureaucracies. A major problem arises when, as Ida Klaus suggests,

"There is an all too prevalent notion in the public sector that everybody employed by government is somehow working for the public and everyone of them, regardless of rank or status is an employee who should be given the same rights as everybody else who is working for government."

(IAP, Klaus, p. 12)

This attitude that everyone works for the taxpayer should be taken as a clear signal that public and client interests are not going to be well protected in the bargaining process. The attitude arises from the fact that public services are not managed in order to produce a profit. There are no stock options for the managers, and no financial gains to be derived from resisting union demands. Indeed, when on the rare occasions that government agencies do begin to accumulate visible sur-

pluses a political crisis is precipitated and it becomes necessary to take action to reduce income or increase expenditures quickly.

Some citizens groups are suggesting that the same organizational powers being created for teachers should be made available to client and citizen groups. One proposal in this regard is for the creation of school councils with some legislative policy authority. Another is suggested by a San Francisco Parent Teacher Association officer who remarked:

"There are those who say we ought to become the parents union. Perhaps we ought to drop the T in PTA and then we could get into that position of creative tension with others who have a role. We should be in an adversary position."

(NCCE, Los Angeles, Friday, p. 146)

And San Francisco AFT president James Ballard seems to agree. When asked whether he thought parents ought to organize a union and bargain collectively, he responded "absolutely" (NCCE, Los Angeles, Friday, p. 122). From the point of view of public and client interests, the dilemmas of a strong teacher union settling bilateral contracts with a strong administrative group are very real. The development of labor policy in education needs to take account of the question of how client/public interests are to be organized. There is little in the way of competent research to guide legislators in this area however.

4. Public participation in or access to the negotiation process itself.

Proposals to structure the relationships between students, parents and public and many and varied groups and the negotiation process. They include (1) strong insistence that private, closed door sessions are essential to real bargaining, (2) public disclosure of initial proposals,

(3) public access to observe the bargaining sessions, (4) actual public participation as members of negotiation teams or (5) "sitting at the table" in a "chair" of their own.

From a research point of view, almost nothing is known about the impact of public disclosure or public participation in negotiations.

5. The definition of administrative procedures, unfair labor practices, the power of a public employee relations board, and the relationship between collective bargaining and other laws affecting teacher employment.

There is a large collection of issues which surround the administration of collective bargaining laws for schools. How the powers of an executive oversight agency are structured, and how budgeting, taxation and previous employer-employee relations laws are handled have a tremendous impact on the balance of powers created between the parties with an interest in collective bargaining. Whether clients or publics will have rights to contract interpretation and enforcement, or appellate review for their grievances against labor and/or management practices is a potentially important matter. At the present moment, however, all of the legal machinery behind public school collective bargaining has made the assumption that only manager and teacher interests need judicial machinery.

There is probably no better conclusion to this inquiry into public and client interests in collective bargaining than that offered by Lovv and Sulzner when they said,

"It is regrettable, though understandable, that public employee organization and bargaining progressed so rapidly as to preclude sufficient consideration of the many salient differences existing between the public and private sector...We can only hope that it is not too late for a reassessment of public employee bar-

gaining--a reassessment aimed at discovery and recognition of the unique characteristics of this process and the development of policy guidelines and regulations keyed to these differences."

(Love & Sulzner, p. 32, 33)¹⁴

Footnotes

- ¹ For a brief summary of the development of collective bargaining legislation in public education, see Laurence Pierce, "Teachers' Organizations and Bargaining: Power Imbalance in the Public Sphere" in National Committee for Citizens in Education, Public Testimony on Public Schools, Chapter VI. Berkeley, California: McCutchen Pub. Corp., 1975.
- ² National Committee for Citizens in Education, Public Testimony on Public Schools. Berkeley, California: McCutchen Pub. Corp., 1975.
- ³ A 45 minute videotape containing excerpts from these interviews is available from The Associates Program, Institute for Educational Leadership, Suite 310, 1001 Connecticut Avenue, N. W., Washington, D. C. 20036.
- ⁴ Information contained in the parentheses following each quotation identifies the transcripts from which the quotation is taken (TAP stands for The Associates Program transcripts; NCCE stands for the transcripts from the National Committee for Citizens in Education hearings). In the case of the TAP transcripts the interviewee and the page number of his/her interview is given. For the NCCE hearings the location of the hearing and page in the transcript for the day is given.
- ⁵ The recognition that collective bargaining is concerned with conflict among competing interests is easily found in the literature on this subject. See for example, Robert L. Walter, The Teacher and Collective Bargaining. Lincoln Nebraska: Professional Educators Publications, Inc., 1975. Walter says, "Collective bargaining is a means by which disputes between employers and employees are resolved." (p. 17).
- ⁶ Hazard also takes this view in his analysis of teacher organizations and the law when he points out that, "Teacher organizations challenge the traditional distribution of power in the public schools." See William R. Hazard, Education and the Law. New York: The Free Press, 1971, p. 283-88.
- ⁷ It is this recognition that the policy, power resource, and statute levels of analysis are qualitatively different which distinguishes the approach taken in this paper from that which is currently found in collective bargaining literature. A few authors explore policy level issues, recognizing that "The purpose of labor organizations is essentially political: it enables workers to participate meaningfully in the decision processes which establish the circumstances of their work, and to a considerable extent their life." (Thomas M. Love and George T. Sulzner, "Political Implications of Public Employee Bargaining," Industrial Relations, Vol. 11, No. 1, 1972, p. 19). This recognition is the exception rather than the rule, however, in literature on school labor law.

- 8 There are many excellent works on the importance of symbols in politics. See, for example: Cobb, Roger W. and Charles D. Elder, Participation in American Politics, (Boston: Allyn and Bacon, Inc., 1972); Edelman, Murray, The Symbolic Uses of Politics, (Chicago: University of Illinois Press, 1974); or Schattschneider, E. E., The Semi-Sovereign People, (New York: Holt, Rinehart and Winston, 1969).
- 9 Theodore Lowi, The End of Liberalism, (New York: Norton, 1969).
- 10 One group chaired by Seymour B. Sorason has made a study of the public and parent interests, published under the title, The Community at the Bargaining Table, (Boston Mass.: Institute for Responsive Education, January, 1975). The use of the word "Community" in the title of this report effectively merges the client and the public interests which are often treated as separate interests by other observers.
- 11 See, for example, the Institute for Responsive Education Study, *ibid.*, Louis V. Imundo, Jr., "Some Comparisons Between Public Sector and Private Sector Bargaining", Labor Law Journal, December, 1973; or Harry Wellington and Ralph Winter, "Structuring Collective Bargaining in Public Employment", Yale Law Journal, Vol. 79, No. 5, April, 1970.
- 12 Perhaps the best piece on this subject is that by John F. Burton, Jr. and Charles Krider, "The Role and Consequences of Strikes by Public Employees", Yale Law Journal, Vol. 79, No. 3, 1970. The view presented in this paper differs significantly from that of Burton and Krider, however I am indebted to their careful treatment of the issues.
- 13 See Public Testimony on Public Schools, *op. cit.*, Chapter 9.
- 14 Love and Sulzner, *op. cit.*, p. 32, 33.